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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PATRICK LOWDEN and CHRISTI
LOWDEN,

Plaintiff,

v.

MAGGIE MILLER-STOUT, *et al.*,

Defendants.

Case No. C08-5365 BHS/KLS

ORDER DENYING PLAINTIFFS'
MOTION TO REMAND

Before the Court is Plaintiffs' motion to remand (Dkt. # 5), Defendants' response (Dkt. # 7), and Plaintiff's reply (Dkt. # 8). Having carefully reviewed Plaintiff's motion, the Court finds that it should be denied.

DISCUSSION

For federal jurisdiction to exist under 28 U.S.C. § 1331, the federal question must appear on the face of the complaint. *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). It is the nature of the cause of action that is controlling. *Rains v. Criterion Systems, Inc.*, 80 F.3d 339, 343 n. 3 (9th Cir. 1996).

On or about May 28, 2008, Plaintiffs filed their Complaint in Thurston County Superior Court alleging that Defendants Maggie Miller-Stout, Eldon Vail and the Washington State

1 Department of Corrections violated their Fourteenth Amendment rights under the United States
2 Constitution and Washington state law, by denying them the opportunity to participate in the
3 Department of Corrections' Extended Family Visiting program. (Dkt. # 1, Exh. 3, p. 11). Plaintiffs
4 also cite to the federal statute, 42 U.S.C. § 1983, as the authority for their claims. (Dkt. # 1, Exh. 3,
5 p. 11; Dkt. # 4, pp. 1-2).

6 On June 6, 2008, Defendants removed this case within thirty (30) days of receipt of
7 Plaintiff's Complaint, pursuant to 28 U.S.C. § 1446. (Dkt. # 1).

8 28 U.S.C. §1441(a), governing removal of suits presenting federal questions to a district
9 court with original jurisdiction, provides in relevant part that, “. . . any civil action brought in a
10 State court of which the district courts of the United States have original jurisdiction, may be
11 removed by the defendant or the defendants, to the district court of the United States for the district
12 and division embracing the place where such action is pending.”

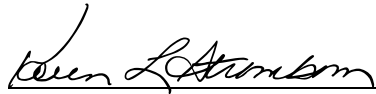
13 28 U.S.C. 1331 provides that “[t]he district courts shall have original jurisdiction of all civil
14 actions arising under the Constitution, laws or treaties of the United States.” Whether removal is
15 appropriate is determined at the time of the petition for removal. *Libhart v. Santa Monica Dairy*
16 *Co.*, 592 F.2d 1062, 1065 (9th Cir. 1979).

17 Thus, this court has original jurisdiction over Plaintiffs' § 1983 equal protection claim and
18 removal is appropriate under Section 1331.

19 According, it is **ORDERED** that Plaintiffs' motion to remand (Dkt. # 4) is **DENIED**.

20 The Clerk of Court is directed to send a copy of this Order to both Plaintiffs and to counsel
21 for Defendants.

22 DATED this 25th day of July, 2008.

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25 Karen L. Strombom
26 United States Magistrate Judge
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